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# **JUVENILE JUSTICE COMMITTEE**

## **MEETING PACKET**

**Wednesday, March 8, 2006  
10:00 AM – 12:00 PM  
214 Capitol**



# ***FLORIDA HOUSE OF REPRESENTATIVES***

***Allan G. Bense, Speaker***

## **Juvenile Justice Committee**

**Faye B. Culp**  
Chair

**Mitch Needelman**  
Vice Chair

### **Meeting Agenda Wednesday, March 8, 2006 214 Capitol, 10:00 AM-12:00 PM**

- I. Opening remarks by Chair Culp**
- II. Roll call**
- III. Update on boot camps by Department of Juvenile Justice representatives**
- IV. Workshop on PCB JUVJ 06-02—Judicial Discretion to Select Commitment Programs**
- V. Closing remarks by Chair Culp**
- VI. Adjournment**



**Office Of The Inspector General**  
**Bureau of Investigations**  
**County Sheriff's Offices Boot Camp Use of Force Policy Comparison**  
**Policies in Effect January 5, 2006**

No.	Subject Area	Bay County Boot Camp	Manatee County Boot Camp	Martin County Juvenile Offender Training Center	Pinellas County Boot Camp	Polk County Juvenile Boot Camp
		Effective Date as Amended	Effective Date as Amended	Effective Date as Amended	Effective Date as Amended	Effective Date as Amended
1.	Effective Date as Amended	01-Apr-03 <sup>1</sup> BCSO-wide policy	01-Jun-05	28-Jan-98 Revised 19-Aug-05	25-Jul-03	(a) 19-Oct-05 (b) 15-Jun-05
2.	Policy or Procedure Number	4030.03	General Order 1023 -- <i>Force and Firearms</i>	900.150 - <i>Use of Force -- Level Two Response</i>	PBC 06.05 <i>Use of Force</i>	(a) Division Procedure I-100-05 (b) General Order 1.5
3.	Policy Applicability	No boot camp specific force policies. Applies to all fully certified sworn personnel, auxiliary, and reserve officers of BCSO while performing official duties.	No boot camp specific force policies. Policy applies to all MCSO personnel.	Policy applies to MCSO JOTC Staff.	Policy applies to Pinellas Boot Camp Programs.	Policy applies to PCSO members assigned to the Boot Camp Bureau.
4.	Policy Directive	Members must act in good faith, only use reasonably necessary force to affect lawful objectives. Applies to deadly and non-deadly force. Only force necessary to control resistance will be used.	Sets forth rules and procedures for use of lethal and less than lethal force.	Establishes guidelines of use and reporting of force.	Physical force shall only be employed as a last resort when other alternatives are not feasible. Only the type and amount of force to accomplish a lawful objective are authorized.	Members shall be trained in approved methods of self-defense and agency use of protective action. Only amount of protective action reasonably necessary to effect lawful objectives may be used.

<sup>1</sup> Separate Use of Force policy for Boot Camp became effective 26-Jan-06.

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5.	Use of Pain Compliance	<i>Authorized.</i> Allowable techniques include touch pressure, leg/hand strikes, impact weapons, or firearms if justified by the resistance offered. Deputies required to adhere to c. 776: <i>Justifiable Use of Force, F.S.</i>	<i>Authorized.</i> Techniques that force subject to comply as a result of deputy inflicting controlled pain upon specific points such as pressure point techniques and electrical restraint devices.	PAR certified staff shall not use hammer-lock, shoulder-lock, wrist-lock, or pressure point techniques on any JOTC youth.	<i>Authorized.</i> Described in Definition of Physical Force.	<i>Authorized.</i> PCSO members required to adhere to c. 776: <i>Justifiable Use of Force, F.S.</i>
6.	Authorized Uses of Force	Policy describes progressive levels of force for increasing levels of subject resistance. Levels of Control range from: <ul style="list-style-type: none"> <li>• Deputy authority identification;</li> <li>• Empty hand control (pressure points, hand/leg strikes);</li> <li>• Intermediate Weapons (aerosol restraints, impact takedowns, impact weapons); to</li> <li>• Deadly force.</li> </ul>	Use of Force/Levels of Resistance Matrix approved by FDLE and the State of Florida Criminal Justice Standards and Training Commission describes resistance levels and corresponding response levels. Response levels range from: <ul style="list-style-type: none"> <li>• Presence;</li> <li>• Dialogue;</li> <li>• Pain</li> <li>• Compliance;</li> <li>• Takedowns;</li> <li>• Intermediate Weapons; to</li> <li>• Lethal Force.</li> </ul>	Reasonable force necessary for: <ul style="list-style-type: none"> <li>• Self defense;</li> <li>• Youth protection;</li> <li>• Property protection;</li> <li>• Escape, mayhem, or riot prevention;</li> <li>• Subject resistance to lawful and reasonable instruction.</li> </ul>	Necessary physical force may be used for: <ul style="list-style-type: none"> <li>• Self defense;</li> <li>• Defense of others from imminent use of unlawful force by another person;</li> <li>• Escape prevention;</li> <li>• Physical resistance to reasonable staff command;</li> <li>• Quelling disturbance, mayhem or riot; or</li> <li>• Protection of property.</li> </ul>	General Order 1.5 allows use of protective action from verbal commands to use of a firearm depending upon level of resistance encountered. Policy describes progressive levels of force for increasing levels of subject resistance.

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7.	Definition of Physical Force	Physical means of establishing control in the presence of resistance.	Force necessary to control action using bodily strength. Either verbal interventions have been exhausted or are not practical given resistance levels. Physical force may include soft or firm assisting touch, control techniques, counter moves, or takedown.	Physical force may encompass use of soft or firm assisting touch, control techniques, counter moves, or takedown.	Force in excess of mere touching to include: <ul style="list-style-type: none"> <li>Subduing by strength or pressure;</li> <li>Grabbing, pulling, pushing or striking to defend against violence;</li> <li>Grabbing pulling, pushing or application or submission restraint holds to gain compliance with lawful order.</li> </ul>	
8.	Shock Incarceration Approach	Not Addressed.	Intake process includes intensive, loud verbal assault with hands-on directing. It is used to maintain control of movement. No force can be used that would be considered abusive or a use of restraint. <sup>2</sup>	Not Addressed.	Not Addressed.	Not Addressed. Policy is specific to restraints and non- deadly protective action.
9.	Training	Not Addressed.	Not Addressed.	Satisfactory completion of Use of Force Training required before physical force and restraining devices may be used.	All drill instructors shall be trained in use of force/mechanical restraint procedures within 15 days of designation.	Not Addressed. Policy is specific to restraints and non- deadly protective action.

<sup>2</sup> MCSO Juvenile Justice Verbal Confrontation Policy applies to MCSO Boot Camp, Youth Academy and Omega Juvenile Prison Programs. Policy cites DJJ mission, program goals and objectives stating "program is to provide a confrontational environment which continually demands an answer to questions concerning the youth's identity, values and life goals."

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10.	Medical Considerations	Officer using force must make treatment available to subject when: <ul style="list-style-type: none"> <li>• Subject requests treatment;</li> <li>• Subject complains of injury or continued pain;</li> <li>• Officer observes or suspects injury to subject;</li> <li>• Subject does not substantially recover from effects of aerosol restraint within reasonable time; or</li> <li>• Supervisor directs Officer.</li> </ul>	Not Addressed	Designated Health Authority shall conduct a post PAR medical assessment to determine if obvious injuries occurred, if youth complains of pain and if youth exhibits symptoms that, to a lay person indicates a PAR Medical Review is necessary.	A member of the Inmate Healthcare Division shall, at the earliest practicable opportunity following the incident, see all youths involved in a physical force incident.	Medical attention shall be immediately administered to a youth involved in a protective action. Medical provider shall document findings on Medical Encounter Record which shall be attached to the Protective Action Report.
11.	Use of Aerosol or Chemical Agents	Authorized. <sup>3</sup> Authorized in policy as use of <i>aerosol subject</i> <i>restraints</i> .	Authorized. Oleoresin capsicum (OC) spray <sup>4</sup> is listed in the category of Restraint Devices under Deputy Response Level 3.	Prohibited. Chemical agents are specifically prohibited from use in the JOTC.	DJJ Consent Required Chemical agents and or oleoresin capsicum spray are prohibited without DJJ consent.	Not Addressed.

<sup>3</sup> Bay County Sheriff McKeithen issued memoranda dated 06-Jan-06 immediately stopping use of ammonia capsules for non-emergency purposes. A separate memo with the same date limited use of ammonia capsules to licensed medical personnel or a "D.I." with proper training.

<sup>4</sup> Commonly referred to as *Pepper Spray*.

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12.	Use of Restraining Devices	<i>Not Addressed.</i>	Authorized use of mechanical tools to restrict subject movement. Includes optional nylon restraining devices and OC spray.	Use of physical restraints are authorized except electronic restraining agents and Pro- Restraint Chair are specifically prohibited from use in the JOTC.	<i>Not Addressed.</i>	Authorized for reasons of safety and security. Use requires documentation, review, and reporting. Pro- Restraint Safety Seat is specifically prohibited from use in the Polk Boot Camp.
13.	Lethal or Deadly Force Prohibitions <sup>5</sup>	Neck restraints specifically prohibited including pressure by choking or use of any object (strap, rope, baton, or flashlight) to choke.	<i>No defined prohibitions.</i> Lethal force techniques are a last resort.	<i>Not Applicable.</i> Program-specific policy has no provisions for lethal or deadly force.	Drill instructors are prohibited from using deadly force to stop boot camp youth from escaping unless imminent threat of great bodily harm or death to another person.	<i>No defined prohibitions.</i> Policy is specific to restraints and non- deadly protective action.
14.	Physical Force for Punishment	<i>Not addressed in policy.</i>	<i>Not addressed in policy.</i>	<i>Not addressed in policy.</i>	Specifically prohibited.	Specifically prohibited Use of TASER as intimidation tool to gain compliance is prohibited.
15.	Mechanical Restraints for Punishment	<i>Not addressed in policy.</i>	<i>Not addressed in policy.</i>	<i>Not addressed in policy.</i>	Specifically prohibited.	Specifically prohibited.

<sup>5</sup> Does not include firearm related deadly force.



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16.	Protective Action Documentation	<p>Offense/Incident Report and Use of Force Report are required any time a member uses force in his/her official capacity.</p> <p>Report must be reviewed by:</p> <ul style="list-style-type: none"> <li>• Immediate Supervisor;</li> <li>• Division Commander; and</li> <li>• Professional Standards Unit.</li> </ul>	<p><i>No requirement in policy.</i></p>	<p>Prior to end of duty, the following reports must be completed:</p> <ul style="list-style-type: none"> <li>• Incident/Accident Report;</li> <li>• Narrative Report;</li> <li>• Supplemental Report;</li> <li>• Protective Action Response Report; and</li> <li>• Logbook documentation.</li> </ul> <p>Shift supervisor must see youth within 24 hours of use of force and provide supervisory review of incident.</p> <p>Operations Commander must review all PAR reports within 24 hours.</p>	<p>Required:</p> <ul style="list-style-type: none"> <li>• Use of force incidents shall be documented in Program Logbook;</li> <li>• Allegations of child abuse shall be reported to DJJ and Commander of the Administrative Investigation Division (AID) who will determine whether command level or AID members will investigate.</li> <li>• Copy of Use of Force Report will be placed in the youth's individual case file.</li> </ul>	<p>Required:</p> <ul style="list-style-type: none"> <li>• Medical attention must be provided and documented.</li> <li>• Indications of abuse shall be reported to IG Hotline.</li> <li>• Inappropriate action requires captain to initiate corrective action.</li> </ul>



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB JUVJ 06-02      Judicial Discretion to Select Commitment Programs  
**SPONSOR(S):** Juvenile Justice Committee  
**TIED BILLS:**      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Juvenile Justice Committee		White	White
1)			
2)			
3)			
4)			
5)			

### SUMMARY ANALYSIS

PCB JUVJ 06-02 implements recommendations contained in the House Juvenile Justice Committee's Interim Report entitled, "Judicial Discretion to Select Juvenile Commitment Programs." Specifically, the bill:

- Creates a year-long pilot program in the First, Eleventh, and Thirteenth Judicial Circuits, which authorizes delinquency court judges to select commitment programs within the restrictiveness level ordered by the court.
- Requires the Department of Juvenile Justice (DJJ) prior to the beginning of the pilot program to:
  - Provide delinquency court judges with a publication that identifies and describes each commitment program in the state.
  - Develop procedures, in consultation with delinquency court judges, to implement the pilot program.
- Requires the DJJ to provide the court with a list of commitment programs for which the youth is eligible, along with the expected wait lists for those programs, and authorizes the court to select a program from the list if the expected wait period is 30 days or less. Alternatively, the court may select commitment programs that have longer wait periods or that are not listed on the DJJ's program list, if the court complies with requirements specified in the bill.
- Requires the submission of a written report to the Legislature and the Governor after the conclusion of the pilot program, which includes:
  - Data on the frequency of court-specified placements and on the impact of such placements on commitment program wait lists.
  - Findings by the DJJ and delinquency courts regarding the benefits and disadvantages of court-specified placements.
  - Recommendations by the DJJ and delinquency courts for amendments to statute addressing commitment.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

***Disposition and Commitment of Delinquent Youth:*** Under current law, when a youth is found to have committed a delinquent act, the options available to the court for disposition include: (1) withholding adjudication and probation; or (2) adjudication and probation or commitment to the minimum-, low-, moderate-, high-, or maximum-risk restrictiveness levels.<sup>1</sup>

Prior to committing a youth, the court must consider a predisposition report (PDR) that is based upon a multidisciplinary assessment of the youth by the DJJ and that includes:

- A description of the youth's criminal history, educational background, and needs, and if residential commitment is considered, a comprehensive evaluation of the youth's physical and mental health and of substance abuse, academic, educational, or vocational problems.
- The DJJ's recommendation for a treatment plan and restrictiveness level as determined during a commitment staffing<sup>2</sup> conducted by the DJJ for the youth.<sup>3</sup>

The PDR must be provided to the court at least 48 hours before the disposition hearing.<sup>4</sup> The court may follow the DJJ's recommendation in the PDR, or it may reject the recommendation if it states reasons that establish by a preponderance of the evidence why it is rejecting the recommendation.<sup>5 6</sup>

If the court orders commitment for the youth, it must specify the restrictiveness level, but it may not select a program within the level.<sup>7</sup> Instead, the DJJ is responsible for placing the youth in a program within the court-ordered restrictiveness level.

***Placement of Committed Youth:*** Once a court has committed a youth to a restrictiveness level, a DJJ commitment manager utilizes the Juvenile Justice Information System (JJIS), which manages the availability of commitment slots, to determine the appropriate program placement. For each committed youth, a DJJ commitment manager enters the following information into the JJIS:

- **The restrictiveness level ordered by the court.**
- **Whether the youth needs any of the following services:** pregnancy services; restitution services; a staff, fence, or hardware secure facility; sex offender treatment; behavior overlay services; residential substance abuse overlay services; intensive mental health services; special needs mental health services; mental health overlay services; developmentally disabled services;

<sup>1</sup> See Section 985.03(46), F.S. (defining each restrictiveness level).

<sup>2</sup> According to DJJ representatives, invitees to the commitment staffing include the JPO, a DJJ commitment manager, the youth, the youth's parent(s) or guardian(s), the state attorney, the public defender, school officials, mental health staff, and other parties with information regarding the youth.

<sup>3</sup> Sections 985.229(1) and 985.23(2) and (3)(b), F.S.

<sup>4</sup> Section 985.229(1), F.S.

<sup>5</sup> See Section 985.23(3)(c), F.S.

<sup>6</sup> Data provided by the DJJ indicates that judges agreed with DJJ's disposition recommendation approximately 76 percent (n=8500) of the time in Fiscal Year 2004-2005.

<sup>7</sup> See *Department of Juvenile Justice v. J.R.*, 716 So.2d 872 (Fla 1st DCA 1998) and *Department of Juvenile Justice v. E.R., J.R., M.C., and C.A.*, 724 So.2d 129 (Fla 3rd DCA 1998) (holding that the court has no statutory authority to require placement of a committed youth in a particular facility).

social and life skills; vocational training; educational services; residential substance abuse treatment; or specialized mental health services.

- **Whether any of the following disqualifying factors apply to the youth:** documented arson history; extremely aggressive behavior; DSM IV diagnosis; psychotropic medications; IQ below 70; serious habitual offender; intensive residential treatment; asthma; diabetes; heart condition; seizures; sickle cell anemia; cancer; sexually transmitted disease; tuberculosis; or pregnancy.

Based on this information, the JJIS produces a list of programs that will meet the youth's needs and for which the youth has no disqualifying factors. The JJIS also indicates the expected wait list for the listed programs. The commitment manager selects a program from the JJIS list after considering which program best meets the youth's needs and which is closest to the youth's home.

The JJIS does not factor Program Accountability Measures (PAM)<sup>8</sup> and Quality Assurance<sup>9</sup> ratings into the placement process; however, DJJ representatives have stated that the commitment manager may be aware of the ratings and may factor these into his or her final placement choice for a youth.<sup>10</sup>

***Interim Project on Judicial Discretion to Select Commitment Programs:*** During the 2006 Interim, the House Juvenile Justice Committee conducted an interim project that reviewed the issue of statutorily affording judges the discretion to select particular commitment programs for youth. This issue had been considered by the Legislature in three bills filed during the 2003 and 2005 Regular Sessions.<sup>11</sup>

The interim project report indicates that a survey of Florida's 81 juvenile delinquency judges was conducted to obtain feedback regarding whether they desire judicial discretion. Out of forty-one judges responding to the survey, more than half (23 judges or 56 percent) believed that statute should be amended to afford judicial discretion. The judges indicated that judicial discretion would be advantageous because it would assist in insuring that placements are based on youth needs and the most effective programming available, rather than on program availability and budgetary concerns.<sup>12</sup>

The interim project report also noted disadvantages to affording judicial discretion, which were cited by judges responding to the survey and by the DJJ. These disadvantages included that: (a) sufficient information on the content and effectiveness of commitment programs may not be readily available to judges in order for them to make informed placement decisions; (b) DJJ employees, who attend the commitment staffing, are in the best position to know which programs are available and for which the youth meets eligibility requirements; and (c) the time youth spend awaiting commitment placements may increase if judges over utilize the most effective programs.<sup>13</sup> In order to mitigate these disadvantages, the report made recommendations that included the following for the Legislature to consider should it desire to grant judicial discretion in the future:

- To offer juvenile delinquency judges greater information on the content and effectiveness of commitment programs, the Legislature could require the DJJ to annually: (a) provide judges with a publication providing a comprehensive overview of each commitment program, including recidivism rates, and PAM and QA ratings; and (b) training at judicial conferences.

<sup>8</sup> PAM scores consist of a program recidivism effectiveness measure and a cost effectiveness measure. Recidivism effectiveness is calculated as the standardized difference between the program's expected recidivism and observed recidivism. Cost effectiveness is calculated as the standardized difference between each program's average cost per youth completing the program and the statewide average cost per completion of \$34,083. See *The 2005 PAM Report*, Department of Juvenile Justice, December 2004, p. 5.

<sup>9</sup> Quality Assurance ratings are based upon an evaluation of the following three elements in each program: (1) level of performance and quality of services; (2) immediate and long-term outcomes; and (3) cost. See *An Introduction to Florida's Juvenile Justice Quality Assurance System*, Department of Juvenile Justice, May 2004, p. 4.

<sup>10</sup> *Judicial Discretion to Select Juvenile Commitment Programs*, House of Representatives Juvenile Justice Committee, January 2006, pp. 4-6.

<sup>11</sup> See HB 1741 and SB 1900 (2003) and HB 1917 (2005).

<sup>12</sup> *Judicial Discretion to Select Juvenile Commitment Programs* at pp. 6, 9, 11.

<sup>13</sup> As discussed in the report, however, this alleged disadvantage might ultimately result in the DJJ either expanding the most effective programs or opening new ones that are equally effective. *Id.* at 9.

- To insure that judges only place youth in commitment programs for which they are eligible, the Legislature could require the DJJ to provide judges, upon request, the list of programs produced by the JJIS for the youth and the wait list for those programs.
- To minimize the risk that judicial placements might result in substantially longer commitment wait lists, the Legislature could provide that such placements must occur within 30 days, rather than within 45 days as specified in the 2005 proposed legislation. For Fiscal Years 2003 through 2005, the average wait list time for placement in a low-, moderate-, or high-risk program was 28 days and in a maximum-risk program was 17.7 days.
- To more fully evaluate the advantages and disadvantages of affording judicial discretion prior to statewide adoption, the Legislature could initially implement such discretion as a pilot program and require the collection of data during the project that includes: (a) the number of youth committed by circuit; (b) the number of youth placed in judicially-specified programs by circuit; (c) the number of times judges deviated from JJIS-listed programs; (d) the average wait list time for judicially- and DJJ-specified program placements; (e) the average time spent by youth in secure detention while awaiting judicially- and DJJ-specified program placements; and (f) a description of any written documents and training provided by the DJJ to judges regarding the content and effectiveness of commitment programs.<sup>14</sup>

*Effect of Bill: The bill implements recommendations contained in the House Juvenile Justice Committee's Interim Report entitled, "Judicial Discretion to Select Juvenile Commitment Programs." Under the bill, a year-long pilot program (September 1, 2006 and August 31, 2007) is created in the First (Escambia, Okaloosa, Santa Rosa, and Walton Counties), Eleventh (Dade County) and Thirteenth (Hillsborough County) Judicial Circuits for the purpose of authorizing delinquency courts in those circuits to specify commitment program placements for youth.<sup>15</sup>*

*The bill requires the DJJ before August 31, 2006, to:*

- *Provide affected delinquency court judges with a publication that identifies the name and address of each commitment program and that describes for each identified commitment program: the population of youth served; the maximum capacity; the services offered; applicable disqualifying factors; and recidivism rates, and cost-effectiveness rankings and quality assurance results under s. 985.412, Florida Statutes, where available, for the past five years.*
- *Develop, in consultation with affected delinquency court judges, procedures to implement the pilot program.*

*The bill authorizes delinquency court judges during the pilot program period to require the DJJ to include in a youth's PDR the list of commitment programs produced by the JJIS for the youth, including the wait list for each program. The judge is then authorized to select a program from the list, which has a wait period of 30 calendar days or less. If the judge wishes to select a program from the list with a wait period in excess of 30 calendar days, the judge is required to state reasons on the record establishing by a preponderance of the evidence that the placement is in the youth's best interest. Further, if the judge wishes to place the youth in a commitment program not on the list, the judge is*

<sup>14</sup> *Id.* at 10-11.

<sup>15</sup> These judicial circuits were selected based upon the number of referrals annually received, the number of commitments annually imposed, and the expressed desire of judges within the circuit to utilize judicial discretion to select commitment programs. The First Judicial Circuit: had the 13<sup>th</sup> highest number of referrals in the state for Fiscal Years 2000 through 2005; had the third highest number of commitments in the state for Fiscal Years 2000 through 2005; and two out of four judges responding to the interim project survey indicated that the law should be amended to afford judicial discretion. The Eleventh Judicial Circuit had the highest number of referrals in the state for Fiscal Years 2000 through 2005; had the sixth highest number of commitments in the state for Fiscal Years 2000 through 2005; and four out of four judges responding to the interim project survey indicated that the law should be amended to afford judicial discretion. The Thirteenth Judicial Circuit: had the fifth highest number of referrals in the state for Fiscal Years 2000 through 2005; had the eighth highest number of commitments in the state for Fiscal Years 2000 through 2005; and two out of four judges responding to the interim project survey indicated that the law should be amended to afford judicial discretion.

*required to state reasons on the record establishing by a preponderance of the evidence that the youth is eligible for the commitment program and that the commitment program is in the youth's best interest. The bill defines "eligible" as meaning a determination that the commitment program provides services needed by the youth and that the youth does not possess any disqualifying factors applicable to the program.*

*Finally, the bill requires the DJJ to submit a report to the Governor and Legislature on or before November 1, 2007, which identifies, according to judicial circuit, the following data for the pilot program period:*

- *The number of youth committed to the department by the delinquency court.*
- *The number of youth placed in a delinquency court-specified:*
  - *Program on the DJJ list with a wait period of 30 calendar days or less;*
  - *Program on the DJJ list with a wait period in excess of calendar days; and*
  - *Commitment program that was not on the DJJ list.*
- *The number of youth placed in a department-specified commitment program.*
- *The average wait period for, and the average number of days spent by youth in secure detention while awaiting placement in, delinquency court-specified commitment programs and department-specified commitment programs.*

*Further, the report must include: (a) a description of the department's compliance with the requirements of subsection (3); (b) findings by the department and by the delinquency courts regarding the benefits and disadvantages of authorizing courts to select commitment programs; and (c) recommendations by the department and by the delinquency courts, if found to be warranted, for amendments to current statute addressing commitment.*

#### **C. SECTION DIRECTORY:**

**Section 1.** Creates a pilot program for the period of September 1, 2006 through August 31, 2007, that authorizes delinquency courts to select commitment programs in the First, Eleventh, and Thirteenth Judicial Circuits; provides definitions; requires the DJJ before August 31, 2006, to provide a publication with specified information about commitment programs to judges participating in the pilot program and to develop, in consultation with those judges, procedures to implement the program; specifies requirements applicable to the selection of commitment programs by judges; requires the DJJ to submit a report to the Governor and Legislature regarding the pilot program by November 1, 2007.

**Section 2.** Provides an effective date of July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

The DJJ funds post-disposition secure detention costs. Under s. 985.215(10)(c) and (d), F.S., any type of detention for which a juvenile scores on his or her risk assessment instrument may be continued until the youth is placed in a high- or maximum-risk commitment program. Accordingly, the bill may increase post-disposition secure detention costs in the First, Eleventh, and Thirteenth Judicial Circuits, to the extent that judicial commitment program placements increase wait lists for

high- and maximum-risk commitment programs. Fiscal impact data on this issue has been requested from the DJJ.<sup>16</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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<sup>16</sup> Last year, the DJJ estimated that HB 1917 could have had up to a \$533,000 fiscal impact for post-disposition secure detention costs. This legislation would have afforded judicial discretion statewide and would have allowed judicially-specified programs to have wait lists up to 45 days. Distinguishably, this bill affects only three judicial circuits and limits the wait list period to 30 days. Accordingly, the projected fiscal impact of this bill is expected to be significantly less than that estimated for last year's legislation.



1                   A bill to be entitled  
2           An act relating to juvenile justice; creating a pilot  
3           program that authorizes specified courts to select  
4           commitment programs for juvenile delinquents; providing  
5           definitions; providing pilot program's purpose; requiring  
6           the department to create a publication that provides  
7           specified information about commitment programs and to  
8           provide specified training; providing procedures for the  
9           selection of commitment programs by courts; requiring a  
10          report; providing an effective date.

11  
12   Be It Enacted by the Legislature of the State of Florida:

13  
14          Section 1. Judicial discretion to select commitment  
15       programs; pilot program. -

16          (1) The definitions contained in s. 985.03, Florida  
17       Statutes, apply to this section. Additionally, for purposes of  
18       this section, the term:

19          (a) "Available placement" means a commitment program for  
20       which the department has determined the youth is eligible.

21          (b) "Commitment program" means a facility, service, or  
22       program operated by the department or by a provider under  
23       contract with the department within a commitment restrictiveness  
24       level.

25          (c) "Delinquency court" means a circuit court in the First,  
26       Eleventh, or Thirteenth Judicial Circuits.

27          (d) "Eligible" means a determination that the commitment  
28       program provides services needed by the youth and that the youth

29 does not possess any disqualifying factors applicable to the  
30 commitment program.

31 (e) "Wait period" means the shortest period of time expected  
32 to elapse prior to placement of a youth in a commitment program,  
33 as determined by the department based upon the anticipated  
34 release dates for youth currently placed in the commitment  
35 program.

36 (2) Between September 1, 2006 and August 31, 2007, a pilot  
37 program shall be conducted in the First, Eleventh, and Thirteenth  
38 Judicial Circuits, which authorizes delinquency courts to select  
39 commitment programs for youth. The purpose of the pilot program  
40 is to identify and evaluate the benefits and disadvantages of  
41 affording such judicial discretion prior to statewide  
42 implementation.

43 (3) Before August 31, 2006, the department shall:

44 (a) Provide delinquency court judges with a publication that  
45 identifies the name and address of each commitment program and  
46 that describes for each identified commitment program: the  
47 population of youth served; the maximum capacity; the services  
48 offered; applicable disqualifying factors; and recidivism rates,  
49 and cost-effectiveness rankings and quality assurance results  
50 under s. 985.412, Florida Statutes, where available, for the past  
51 five years.

52 (b) Develop, in consultation with delinquency court judges,  
53 procedures to implement the provisions of this section.

54 (4) Between September 1, 2006 and August 31, 2007, a  
55 delinquency court may:

56 (a) Order the department to include in a youth's  
57 predisposition report a list of all available placements within

58 each restrictiveness level identified by the court or recommended  
59 by the department. The list shall also indicate the wait period  
60 for each available placement identified by the department.

61 (b) Specify an available placement identified in the listing  
62 under paragraph (a), which has a wait period of 30 calendar days  
63 or less, for a youth committed to the department by the court.

64 Alternatively, a delinquency court may specify:

65 1. An available placement with a wait period in excess of 30  
66 calendar days, if the court states reasons on the record  
67 establishing by a preponderance of the evidence that the  
68 placement is in the youth's best interest.

69 2. A commitment program that is not listed as an available  
70 placement, if the court states reasons on the record establishing  
71 by a preponderance of the evidence that the youth is eligible for  
72 the commitment program and that the commitment program is in the  
73 youth's best interest.

74 (5) (a) On or before November 1, 2007, the department shall  
75 submit a written report to the appropriate substantive and fiscal  
76 committees of the Legislature and to the Governor, which  
77 identifies, according to judicial circuit, the following data for  
78 the pilot program period:

79 1. The number of youth committed to the department by the  
80 delinquency court.

81 2. The number of youth placed in a delinquency court-  
82 specified:

83 a. Available placement with a wait period of 30 calendar  
84 days or less;

85 b. Available placement with a wait period in excess of  
86 calendar days; and

87 c. Commitment program that was not listed as an available  
88 placement.

89 3. The number of youth placed in a department-specified  
90 commitment program.

91 4. The average wait period for, and the average number of  
92 days spent by youth in secure detention while awaiting placement  
93 in, delinquency court-specified commitment programs and  
94 department-specified commitment programs.

95 (b) The report required under paragraph (a) must also  
96 include:

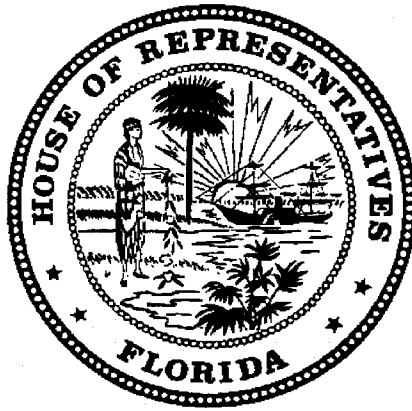
97 1. A description of the department's compliance with the  
98 requirements of subsection (3).

99 2. Findings by the department and by the delinquency courts  
100 regarding the benefits and disadvantages of authorizing courts to  
101 select commitment programs.

102 3. Recommendations by the department and by the delinquency  
103 courts, if found to be warranted, for amendments to current  
104 statute addressing commitment.

105 Section 2. This act shall take effect July 1, 2006.

# **Florida House of Representatives**



## **INTERIM REPORT ON JUDICIAL DISCRETION TO SELECT JUVENILE COMMITMENT PROGRAMS**

**JUVENILE JUSTICE COMMITTEE**

**JANUARY 2006**

## I. INTRODUCTION

Currently, s. 985.231(1)(a)3., F.S., authorizes the court, when committing an adjudicated delinquent youth to the Department of Juvenile Justice (DJJ or department), to order a commitment restrictiveness level for the youth.<sup>1</sup> The statute, however, does not authorize the court to select the particular commitment program for the youth. Instead, the DJJ is responsible for choosing a commitment program within the court-ordered restrictiveness level.

During the 2003 and 2005 Regular Sessions, the Legislature considered, but did not pass, legislation that would have authorized judges to select a particular program within a commitment restrictiveness level.<sup>2</sup> The legislation provided the court with the *discretion* to select a program, but it did not require this responsibility of the judiciary. Representatives of the DJJ raised concerns about the legislation, indicating that it might generate additional costs if judicial program selection resulted in youth remaining in post-disposition secure detention for a longer period of time.<sup>3</sup> The judiciary did not testify regarding this legislation.

In order to provide legislators with judicial input, the Florida Senate Criminal Justice Committee conducted a survey of Florida juvenile delinquency judges in 2003, which included the following two questions: (1) Did the judge believe that the current statutory commitment placement process was effective? and (2) How well did the current statutory commitment placement process function in the judge's circuit?<sup>4</sup>

In the committee's report entitled, "Judicial Discretion Placing Juveniles in Specific Commitment Programs," it was indicated that 38 out of the 82 surveys distributed (46 percent) were returned.<sup>5</sup> Out of the 38 respondents to Question 1:

- Thirty-two judges rated the current process effective (84 percent of respondents); however, when answering Question 2., 11 of the 32 judges indicated that they had some or many problems with the process.<sup>6</sup>
- Five judges found the current process ineffective (13 percent of respondents).
- One judge found that the "effectiveness depends" (three percent of respondents).<sup>7</sup>

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<sup>1</sup> Section 985.03(46), F.S., provides that, "[r]estrictiveness level means the level of programming and security provided by programs that service the supervision, custody, care, and treatment needs of committed children." According to s. 985.231(1)(a)3., F.S., "[s]uch commitment must be for the purpose of exercising active control over the child, including, but not limited to, custody, care, training, urine monitoring, and treatment of the child...."

<sup>2</sup> See HB 1741 and SB 1900 (2003) and HB 1917 (2005).

<sup>3</sup> See House Bill Analysis for HB 1917, April 12, 2005, p. 8.

<sup>4</sup> See *Senate Questionnaire Regarding s. 985.231(1)(a)3., F.S.* (2003); and *Judicial Discretion Placing Juveniles in Specific Commitment Programs*, Report No. 2004-126, Senate Criminal Justice Committee, January 2004, pp. 1, 3-5.

<sup>5</sup> *Judicial Discretion Placing Juveniles in Specific Commitment Programs*, Report No. 2004-126 at p. 3.

<sup>6</sup> Problems cited by judges who found the current process to be effective included that: (1) the DJJ sometimes places youth in inappropriate placements and processes them based upon the estimated length of stay in a residential program; (2) placement is driven by bed space, rather than programming that meets the youth's needs; and (3) high level programs are underfunded and youth are in secure detention too long while awaiting placement. *Id.* at 4-5.

<sup>7</sup> *Id.* at 3.

The Senate survey did not specifically ask judges whether it would be desirable to amend statute to provide judicial discretion to select commitment programs, as had been proposed in the 2003 and 2005 legislation.

During the 2005 interim, staff was directed to further review the issue of providing judicial discretion to select commitment programs. Accordingly, this report contains:

- An overview of relevant statutes and DJJ policies relating to disposition, commitment, and placement.
- The results of a survey of Florida juvenile delinquency judges, which requested opinions on the current satisfaction level with DJJ placement decisions, judicial knowledge of commitment programs, and the desirability of providing judicial discretion.
- The DJJ's position on providing judicial discretion.
- Recommendations that the Legislature may wish to consider if legislation providing judicial discretion is filed in the future.

## II. METHODOLOGY

Staff reviewed current statutes and DJJ policies regarding the disposition, commitment, and placement of adjudicated delinquent youth. Further, staff disseminated a survey through the Office of State Courts Administrator to each chief judge in Florida's 20 judicial circuits with a request that he or she distribute the survey to juvenile delinquency judges within the circuit. Additional data were gathered through interviews with state juvenile delinquency judges and representatives of the DJJ, and through site visits to juvenile court.

## III. FINDINGS

### Statutes and DJJ Policies Addressing Disposition, Commitment, and Placement of Delinquent Youth

***Disposition and Commitment of Delinquent Youth:*** When a youth has been found to have committed a delinquent act, the first disposition determination to be made by the court is "the suitability or nonsuitability for adjudication and commitment of the child to the department."<sup>8</sup> The options available to the court for disposition include:

- A withhold of adjudication and imposition of a probation program with community-based sanctions;<sup>9</sup> or
- Adjudication and:
  - Imposition of a probation program;<sup>10</sup> or

<sup>8</sup> Section 985.23(2), F.S.

<sup>9</sup> Community-based sanctions may include, but are not limited to, participation in substance abuse treatment, a day-treatment probation program, restitution, a curfew, revocation or suspension of the youth's driver's license, community service, and appropriate educational programs. Section 985.23(4), F.S.

<sup>10</sup> A probation program for an adjudicated youth must include penalties such as restitution, community service, a

- Commitment to the DJJ for placement in:
  - The non-residential minimum-risk restrictiveness level;
  - The residential low-, moderate-, high-, or maximum-risk restrictiveness level;<sup>11</sup> or,
  - A serious or habitual juvenile offender or juvenile sexual offender program.<sup>12</sup>

Before ordering commitment for a youth, the court must consider a predisposition report (PDR) that is based upon a multidisciplinary assessment of the youth by the DJJ and that includes:

- A description of the youth's criminal history, educational background, and needs, and if residential commitment is considered, a comprehensive evaluation of the youth's physical and mental health and of substance abuse, academic, educational, or vocational problems.
- The DJJ's recommendation for a treatment plan and restrictiveness level as determined during a commitment staffing<sup>13</sup> conducted by the DJJ for the youth.<sup>14</sup>

The PDR must be provided to the court at least 48 hours before the youth's disposition hearing.<sup>15</sup> The court may choose to follow the DJJ's recommendation in the PDR, or it may reject the recommendation if it states reasons that establish by a preponderance of the evidence why the court is rejecting the DJJ's recommendation.<sup>16 17</sup> Any party may appeal the court's decision to reject the DJJ's recommendation.<sup>18</sup>

If the court orders commitment for the youth, it must specify the commitment restrictiveness level, but it may not select a particular program within the level.<sup>19</sup> Instead, the DJJ is responsible for placing the youth in a program within the court-ordered restrictiveness level.

**Placement of Committed Youth:** Once a court has committed a youth to a restrictiveness level, a DJJ commitment manager utilizes the Juvenile Justice Information System (JJIS) to determine the appropriate program placement. The JJIS manages the availability of bed slots within the 168 programs currently offered in the five commitment restrictiveness levels. [See Exhibit 1, for identification of the number of commitment programs offered within each restrictiveness level.]

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curfew, revocation or suspension of the driver's license of the youth, or other nonresidential punishment appropriate to the offense and a rehabilitative program such as participation in substance abuse treatment or in school or another educational program. Section 985.231(1)(a)1., F.S.

<sup>11</sup> See Section 985.03(46), F.S. (defining each restrictiveness level).

<sup>12</sup> Section 985.231, F.S.

<sup>13</sup> According to DJJ representatives, invitees to the commitment staffing include the JPO, a DJJ commitment manager, the youth, the youth's parent(s) or guardian(s), the state attorney, the public defender, school officials, mental health staff, and other parties with information regarding the youth.

<sup>14</sup> Sections 985.229(1) and 985.23(2) and (3)(b), F.S.

<sup>15</sup> Section 985.229(1), F.S.

<sup>16</sup> See Section 985.23(3)(c), F.S.

<sup>17</sup> Data provided by the DJJ indicates that judges agreed with DJJ's disposition recommendation approximately 76 percent (n=8500) of the time in Fiscal Year 2004-2005.

<sup>18</sup> Section 985.23(3)(c), F.S.

<sup>19</sup> See *Department of Juvenile Justice v. J.R.*, 716 So.2d 872 (Fla 1st DCA 1998) and *Department of Juvenile Justice v. E.R., J.R., M.C., and C.A.*, 724 So.2d 129 (Fla 3rd DCA 1998) (holding that the court has no statutory authority to require placement of a committed youth in a particular facility).



**Exhibit 1.**

<b>Restrictiveness Level</b>	<b>Number of Programs</b>	<b>Number of Youth Currently Being Served</b>	<b>Current Number of Bed Slots</b>
Minimum-risk	19	78	176
Low-risk residential	18	393	473
Moderate-risk residential	93	3823	4049
High-risk residential	34	1792	1902
Maximum-risk residential	4	125	133
Total	168	6211	6733

Source: DJJ, August 2005.

For each committed youth, a DJJ commitment manager enters the following information into the JJIS:

- **The restrictiveness level ordered by the court:** minimum-, low-, moderate-, high-, or maximum-risk.
- **Whether the youth needs any of the following services:** pregnancy services; restitution services; a staff, fence, or hardware secure facility; sex offender treatment; behavior overlay services; residential substance abuse overlay services; intensive mental health services; special needs mental health services; mental health overlay services; developmentally disabled services; social and life skills; vocational training; educational services; residential substance abuse treatment; or specialized mental health services.
- **Whether any of the following disqualifying factors apply to the youth:** documented arson history; extremely aggressive behavior; DSM IV diagnosis; psychotropic medications; IQ below 70; serious habitual offender; intensive residential treatment; asthma; diabetes; heart condition; seizures; sickle cell anemia; cancer; sexually transmitted disease; tuberculosis; or pregnancy.

Based on this information, the JJIS produces a list of programs that will meet the youth's needs and for which the youth has no disqualifying factors. The JJIS also indicates the expected wait list for the listed programs. [See Exhibit 2, for identification of the average number of days youth spent in Fiscal Years 2003 through 2005 awaiting residential commitment program placement.]

## **Exhibit 2.**

<b>Risk Level<sup>20</sup></b>	<b>Low-risk</b>	<b>Moderate-risk</b>	<b>High-risk</b>	<b>Maximum-risk</b>
Average # of days on waiting list in Fiscal Year '03—'04	24.3 days	27.1 days	34 days	17.3 days
Average # of days on waiting list in Fiscal Year '04—'05	28.6 days	25.3 days	28.5 days	18.1 days

Source: DJJ.

If no programs are currently available, the JJIS indicates which program will have the next vacancy based on anticipated release dates. The commitment manager selects a program from the JJIS list after considering which of the programs best meets the youth's needs and which is closest to the youth's home.

The JJIS does not factor Program Accountability Measures (PAM)<sup>21</sup> and Quality Assurance<sup>22</sup> ratings into the placement process; however, DJJ representatives have indicated that the commitment manager may be aware of the ratings and may, in his or her discretion, factor these into the final placement choice for a youth.<sup>23</sup>

### **Judicial Survey Results**

Staff distributed a survey through the Office of State Courts Administrator to each chief judge in Florida's 20 judicial circuits with a request that he or she distribute the survey to juvenile delinquency judges within the circuit. Out of a possible 81 juvenile delinquency judges in Florida, 41 judges responded to the survey (51 percent). The responses were received from 16 of Florida's 20 judicial circuits.<sup>24</sup>

<sup>20</sup> Minimum-risk nonresidential was not a "commitment" option during Fiscal Years 2003-2005. See Footnote 25, *infra*.

<sup>21</sup> PAM scores consist of a program recidivism effectiveness measure and a cost effectiveness measure. Recidivism effectiveness is calculated as the standardized difference between the program's expected recidivism and observed recidivism. Cost effectiveness is calculated as the standardized difference between each program's average cost per youth completing the program and the statewide average cost per completion of \$34,083. See *The 2005 PAM Report*, Department of Juvenile Justice, December 2004, p. 5.

<sup>22</sup> Quality Assurance ratings are based upon an evaluation of the following three elements in each program: (1) level of performance and quality of services; (2) immediate and long-term outcomes; and (3) cost. See *An Introduction to Florida's Juvenile Justice Quality Assurance System*, Department of Juvenile Justice, May 2004, p. 4.

<sup>23</sup> Information regarding the JJIS and the DJJ's placement procedures was provided during an interview of DJJ Residential Services staff on August 25, 2005.

<sup>24</sup> Survey responses were received from judges in the First, Second, Third, Fifth, Seventh, Eighth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Nineteenth, and Twentieth Judicial

**Satisfaction level with DJJ placement decisions:** The survey asked juvenile delinquency judges to rate their level of satisfaction with the DJJ's placement decisions for residentially committed youth.<sup>25</sup> Of the 41 judges responding:

- 29 percent were very satisfied.
- 44 percent were somewhat satisfied.
- 12 percent were somewhat dissatisfied.
- Three percent were very dissatisfied.
- 12 percent stated unknown or did not answer the question.

[See Exhibit 3, for a breakdown of responses by residential restrictiveness level.]

**Exhibit 3.**

<b>Residential Restrictiveness Level</b>	<b>Very Satisfied</b>	<b>Somewhat Satisfied</b>	<b>Somewhat Dissatisfied</b>	<b>Very Dissatisfied</b>	<b>Unknown/ No answer</b>
Low-risk	14	19	3	2	3
Moderate-risk	10	19	8	1	3
High-risk	12	19	5	1	4
Maximum-risk	12	15	4	1	9

The survey also provided judges, who expressed dissatisfaction with placement decisions, with an opportunity to explain their answers. The explanations included the following:

- Five judges were dissatisfied due to a lack of program options and long waiting lists. One of these judges cited insufficient funding as the cause of these problems.
- Two judges were dissatisfied because they believe the DJJ should consider commitment at an earlier point in the juvenile's delinquency history.
- One judge was dissatisfied because youth are not always placed in a program that addresses the youth's needs.
- One judge was dissatisfied because the DJJ does not do comprehensive psychological evaluations on youth unless commitment is targeted.<sup>26</sup>
- One judge stated that the DJJ's placement decisions were generally appropriate and that increased use of assessments had improved the process; however, the judge noted that the assessment is often not available to the judge at the time of disposition, even though it would be a useful tool for a judge in making disposition decisions.

**Knowledge of commitment programs:** The survey asked juvenile delinquency judges to indicate whether they believe judges possess sufficient knowledge about commitment programs to select programs that will appropriately address youth needs. Out of 41 responses, four judges (10 percent)

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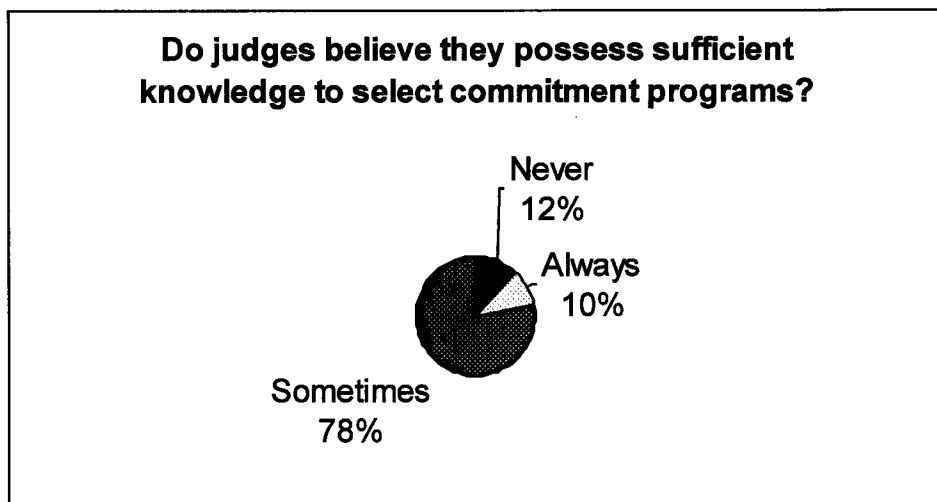
Circuits.

<sup>25</sup> The survey dated June 30, 2005, only requested opinions regarding residential commitment because the non-residential minimum-risk restrictiveness level was not operative until July 1, 2005. *See* Ch. 2005-263, L.O.F. (creating the minimum-risk restrictiveness level).

<sup>26</sup> Statute requires a multidisciplinary assessment of a delinquent youth when the youth is being considered for commitment by the DJJ or the court. Statute also permits the court to order such assessment in its discretion even if commitment is not being considered. Section 985.229(2), F.S.

answered “Always”; 32 judges (78 percent) answered “Sometimes”; and five judges (12 percent) answered “Never.” [See Exhibit 4.]

**Exhibit 4.**



The survey also asked judges to identify how they learn about the content and effectiveness of commitment programs. Thirty-six judges responded to this question and the most frequently provided answers were:

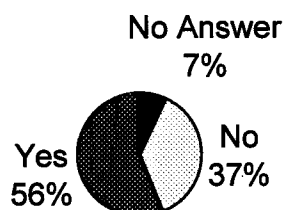
- Information provided by DJJ staff and publications.
- Program site visitation.
- Discussions with the youth and/or his or her guardian during and after the youth’s completion of the commitment program.

Additionally, responding judges indicated that they: (1) could receive greater education regarding the content and effectiveness of commitment programs by requiring DJJ staff to provide them with such information in writing and with training at judicial conferences; and (2) would make greater efforts to learn about the content and effectiveness of commitment programs if they had the ability to select particular programs.

***Judicial discretion to select commitment programs:*** The survey asked juvenile delinquency judges to indicate whether they believe the law should be amended to provide them with the option of selecting a particular program for a youth within the court-ordered commitment restrictiveness level. Out of 41 surveys, 23 judges (56 percent) responded, “Yes”; 14 judges (34 percent) responded, “No”; and four judges (10 percent) did not answer. [See Exhibit 5.]

## **Exhibit 5.**

**Do judges believe the law should be amended to allow judicial discretion to select commitment programs?**



***Advantages/ disadvantages to granting judicial discretion to select commitment programs:*** Judges, who responded that the law should be amended to provide judicial discretion, indicated that the chief advantages would be:

- Greater assurance that placement decisions are based only on the youth's rehabilitation needs and on the program's effectiveness. According to judges, they often know more than the DJJ about the youth, the youth's family, and the community's needs. Further, judges indicated that they would be less influenced than the DJJ by program availability and budgetary concerns when making placement decisions.
- The continued funding of only the most effective programs. As explained by one judge, granting judicial discretion may initially result in the overcrowding of the most effective programs; however, ultimately, this would require the DJJ to expand the most effective programs or open new ones that are equally effective.

Disadvantages to granting judicial discretion, as indicated by responding judges, included that:

- The DJJ is more familiar with the content and availability of commitment programs than the court.
- Judges are not social workers or mental health professionals and often only handle delinquency cases for a brief period of time or on a part-time basis. The lack of experience and knowledge could result in inappropriate judicial placements.
- The time youth spend awaiting commitment placements may increase if the courts over utilize certain programs and create a backlog.
- Parents would always request that the court place the youth in the program closest to home even if the program did not meet the youth's needs.<sup>27</sup>

<sup>27</sup> Under the judicial discretion legislation considered in 2003 and 2005, the court would not have been required to grant the parent's request for a closely located program. Further, parents currently can make this request of the DJJ.

## The DJJ's Position on Judicial Discretion

In preparation for this report, the DJJ was asked to provide its current position on whether judges should be provided with discretion to select commitment programs; however, DJJ representatives indicated that they do not wish to take an official position until legislation on the subject is filed and may be reviewed.

Senate Interim Project Report 2004-126 explained the DJJ's position on this subject as follows: "The DJJ maintained that this new practice [i.e., the new practice authorized by the 2003 legislation, which would have granted judicial discretion to select particular commitment programs] would infringe upon its ability and authority to manage the placement of adjudicated juveniles in commitment programs."<sup>28</sup>

Further, concerning the DJJ's position on this subject, it was stated in the staff analysis for HB 1917 in 2005, that:

The department [the DJJ] also indicates that the bill's amendments to s. 985.231, F.S., which permit courts to specify commitment programs, may result in additional post-disposition detention costs. According to the department, the average length of stay in post-disposition [secure] detention while awaiting placement in a commitment program is 13 days. Under the bill, the court is permitted to specify a commitment program so long as placement occurs within 45 days (thereby, according to the DJJ, permitting an additional 32 days in detention). The department states that this may generate up to an approximate \$533.6K fiscal impact for additional detention costs based on the following calculation: 145 (average daily secure detention population) X \$115 (daily secure detention cost per youth) X 32 (additional days permitted by the bill). This figure, however, is likely overstated for the following reasons: (a) not all courts will specify a program for committed youth; (b) not all court specified commitment programs will require the youth to wait more than the average of 13 days to be placed; and (c) not all committed youth are going to be placed in secure detention while awaiting commitment program placement.<sup>29 30</sup>

<sup>28</sup> *Judicial Discretion Placing Juveniles in Specific Commitment Programs*, Report No. 2004-126 at p. 1.

<sup>29</sup> Committed youth may only be placed in secure detention while awaiting placement in commitment if the youth's risk assessment instrument (RAI) score warrants secure detention. *J.W. v. Leitner*, 801 So.2d 295 (Fla. 2nd DCA 2001). If the youth is committed to the: (a) low- or moderate-risk restrictiveness levels, s. 985.215(10)(a)1., F.S., limits secure detention prior to commitment program placement to 5-days (b) moderate-risk restrictiveness level, s. 985.215(10)(a)1., F.S., limits secure detention prior to commitment program placement to 15-days; or (b) high- or maximum-risk restrictiveness level, s. 985.215(10)(c) and (d), F.S., provides for the continuance of any type of detention for which the youth scored until placement.

<sup>30</sup> See House Bill Analysis for HB 1917, April 12, 2005, p. 8.

## IV. CONCLUSION AND RECOMMENDATIONS

As discussed *supra*, the Legislature has twice considered, but not passed, legislation that would grant judges the discretion to select particular commitment programs. Specifically, the 2005 legislation would have:

- Permitted judges to specify a commitment program that is within the court-ordered restrictiveness level and under contract with the DJJ.
- Authorized the DJJ to provide judges, who specify high- or maximum-risk programs, with alternative placements that could be accomplished more quickly than the court-specified placement.
- Required judges, if the specified placement could not occur within 45 days after the commitment order, to select from at least three alternative placements provided by the DJJ.
- Required the DJJ to obtain written approval from the court prior to transferring a youth, under s. 985.404(4), F.S., from a court-specified program.

The results of the survey conducted for this interim project indicate that more than half (56 percent) of juvenile delinquency judges responding support judicial discretion to select commitment programs because they believe it will assist in insuring that placements are based on the youth's needs and the most effective programming available, rather than on program availability and budgetary concerns. As discussed *supra*, however, judges and the DJJ have indicated that the legislation could be disadvantageous in that: (a) sufficient information on the content and effectiveness of commitment programs may not be readily available to judges; (b) DJJ employees, who attend the commitment staffing, are in the best position to know which programs are available and for which the youth meets eligibility requirements;<sup>31</sup> and (c) the time youth spend awaiting commitment placements may increase if judges over utilize the most effective programs.<sup>32</sup>

In order to mitigate the disadvantages cited, the Legislature may wish to consider the following options if legislation granting judicial discretion is filed in the future:

- **Enhancing judicial knowledge generally--**
  - The Legislature, in order to increase judicial knowledge of the content and effectiveness of commitment programs generally, may wish to require the DJJ to annually provide juvenile delinquency judges with:
    - A single publication that comprehensively details the content of each commitment program offered in Florida, the population of youth served, treatment services provided, applicable disqualifying factors, recidivism rates, and PAM and QA ratings.<sup>33</sup>

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<sup>31</sup> The JJIS determines youth eligibility for a commitment program by evaluating the youth's needed services and determining whether the youth possesses any disqualifying factors for the program. Services and disqualifying factors are described at page 5 of this report.

<sup>32</sup> As discussed *supra*, however, this alleged disadvantage may ultimately result in the DJJ either expanding the most effective programs or opening new ones that are equally effective.

<sup>33</sup> Currently, the DJJ produces a document entitled the, "JJIS Commitment Program Resource Directory," which provides some information on each program's substance, population, treatment services, and disqualifying factors. It does not contain, however, information on recidivism rates or PAM or QA scores. This latter information is reported by the DJJ in multiple other publications.

- Training at judicial education programming biannually sponsored by the Office of the State Courts Administrator.
- **Creating a flexible and accountable judicial placement process that provides judges with information necessary to placement decision making –**
  - The Legislature may wish to require that the DJJ include the following information in a PDR when a judge indicates that he or she may exercise placement discretion during a youth's disposition: (a) the list of programs produced by the JJIS for the youth at the restrictiveness level being considered by the court and at the restrictiveness level recommended by the DJJ; and (b) the wait list for each program on the JJIS list. Such information would advise the judge of the programs for which the youth is eligible and in which the youth can most quickly be placed.
  - The Legislature may wish to require that judges place youth in a JJIS-listed program with the exception that judges may select different programs if they: (a) state reasons on the record, which establish by a preponderance of the evidence why the JJIS-listed programs are being rejected; and (b) find that the youth does not possess factors that would disqualify him or her from the selected program. As with judicial deviations from DJJ restrictiveness level recommendations, the decision to deviate from the program list could be made subject to appeal.<sup>34</sup> Such a process would afford judicial flexibility, while requiring judicial accountability.
- **Minimizing wait list increases –**
  - Based on data for Fiscal Years 2003 through 2005, the average wait list time for placement in a low-, moderate-, or high-risk program was 28 days and in a maximum-risk program was 17.7 days. Under the 2005 legislation, if a court-specified placement would have required more than 45 days, the judge would have had to select from at least three alternative programs identified by the DJJ. In order to eliminate the possibility of judicial placements substantially increasing the average wait list times, the Legislature may wish to consider lowering the 45-day trigger to 30 days.
- **Conducting a pilot project–**
  - The Legislature may wish to initially implement judicial discretion to select commitment programs in a limited number of judicial circuits for a limited period of time so that this policy change may be fully evaluated prior to statewide adoption. Data required to be captured during the pilot project could include: (a) the number of youth committed by circuit; (b) the number of youth placed in judicially-specified programs by circuit; (c) the number of times judges deviated from JJIS-listed programs and the number of appeals taken from those deviations; (d) the average wait list time for judicially- and DJJ-specified program placements; (e) the average time spent by youth in secure detention while awaiting judicially- and DJJ-specified program placements; and (f) a description of any written documents and training provided by the DJJ to judges regarding the content and effectiveness of commitment programs.

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<sup>34</sup> See Section 985.23(3)(c), F.S.